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**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)
700.0002

In re Application of: **Devecka**

Application No. **09/058,722**

Filed: **April 10, 1998**

For: **METHOD AND APPARATUS FOR SIMULATING A JAM SESSION AND
INSTRUCTING A USER IN HOW TO PLAY THE DRUMS**

6/12/99

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John Ma
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The owner*, **John R. Devecka**, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 5,739,457. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.20(d), is cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

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Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney of record.

MAY 27 1999

TECHNOLOGY CENTER 2800

Peter H. Priest

Signature

5/19/99

Date

Peter H. Priest, Reg. No. 30,210

Typed or printed name

Terminal disclaimer fee under 37 CFR 1.20(d) included.

*Certification under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).

Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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INFORMAL TERMINAL DISCLAIMER MEMO

DATE: 6/2/99

SERIAL NO: 09/058722

TO: Ex'r Dorels

ART UNIT: 2837

FROM: J. Macaluso

TD FILED: 5/24/99

Paralegal Specialist
Office of the Special
Programs Examiner
Technology Center 2800

Examiner Initials/date

Instructions: The Terminal Disclaimer accompanying this application has been reviewed and the results identified below. Please use the appropriate Form Paragraph(s) to notify the applicant of the PTO decision regarding the "TD."



- The TD is Accepted and has been recorded (sec 14.23).

- TECHNICAL SUPPORT: The TD fee of \$_____ needs to be charged to Deposit Account: _____

- The TD is Defective and has not been accepted for the following reason(s):

- The recording fee of \$_____ has not been paid/applied and [nor does] there is no [appear to
be] general fee authorization to charge the deposit account (sec MPEP 14.25);

- The TD is signed by an Attorney/Agent who is NOT of Record in the file (sec MPEP 1490 or 35 USC 253);

- It lacks the enforceable only during the common ownership clause (Rule 37 CFR 1.321(c)) (See MPEP 14.27,
14.27.1);

- It is directed to a particular claim or claims and not a terminal portion of the term of the entire patent to be granted (sec
MPEP 14.26, 14.26.2, 1490);

- It is not signed. (MPEP 14.26, 14.26.3);

- The serial no. of the application (or the patent no.) which forms the basis for the double patenting
rejection is missing or incorrect (sec MPEP 14.32);

- The serial no. of this pending application (or the number of the patent in reexam. and/or reissue
cases) being disclaimed is missing or incorrect (sec MPEP 14.26, 14.26.4 or 14.26.5);

- The period disclaimed is incorrect or not specified (sec MPEP 14.27, 14.27.2 or 14.27.3); and

- This pending application and the patented (pending) application (which forms the basis of the double patenting rejection) are not
commonly owned.

Terminal Disclaimers Submitted/Signed by the Assignee

- No 3.73(b) statement was provided.

- 3.73(b) statement is defective because:

- The person who signed the TD failed to state his/her capacity to sign for
the business entity (sec MPEP 14.28);

- The person who signed the TD is not recognized as an Officer of the Assignee (MPEP 14.29);

- There is insufficient evidence of the chain of title from the inventor to the assignee -- no
reel and frame number specified as to where such evidence is recorded in the
PTO (37 CFR 3.73(b)); and

- A revised TD can be filed to overcome the above objections - no additional T.D. fee is required.

**DO NOT PROVIDE THIS MEMO TO APPLICANT,
MEMO MUST BE RETURNED TO SPRE UNIT**